

Attorney Docket No.: J6832(C)
Serial No.: 10/800,810
Filed: March 15, 2004
Confirmation No.: 1604

REMARKS

The present amendment is submitted in an earnest effort to advance the case to issue without delay.

Claim 5 was rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent 5,350,694 (Zimmerle).

Claim 5 has been canceled.

Claims 1, 3 and 4 were rejected under 35 U.S.C. § 103(a) as unpatentable over Paniccia (Poucher's Perfumes, Cosmetics and Soaps, 2000) and U.S. Patent 5,641,495 (Jokura et al.). Applicant traverses this rejection.

The present invention concerns a method for overcoming in-grown hair. Another name for this affliction is razor bumps or *pseudofolliculitis barbae*. Basis of the problem is that curved hairs grow out and then re-enter the skin like a small splinter, resulting in inflammation and in some instances pustule formation. See Paniccia at page 348, last paragraph. Even though the reference describes the razor bump problem, nothing in the reference suggests a solution. Paniccia does speak about the desirability of reducing irritation caused by shaving nicks and cuts. However, this is not associated with the discussion on razor bumps.

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Even were one to subscribe to the Examiner's theory that irritation is the underlying problem to overcoming in-grown hair, it does not follow that lubrication would solve this problem. In particular, the Examiner refers to a formulation at page 351 (Formula I) cited for containing glycerol as a moisturizing ingredient.

Applicant reports a clinical study under Example 6 of the specification. Four active materials were evaluated (see Table VII) in a base formula (see Table VI). Cell A employed salicylic acid salt. Results were much inferior to Cells B, C and D. Note that the base formula for all the cells (Table VI) contains 7% glycerin (glycerol). Accordingly, Cell A through the base formula serves as a control experiment. It is evident that 7% glycerin without the further presence of a malonic acid salt does not provide the same level of relief against in-grown hair as does the malonic acid salts. Compare results of treatment with the formula in Cell A versus results in Cell B, C and D. The Examiner's theory that glycerin (glycerol) or moisturizing agents are key to relief of the condition is not substantiated.

Jokura was introduced for disclosing amine salts of malonic acid in cosmetically acceptable vehicles. These are said to be moisturizers. Yet nothing in this reference teaches or suggests that malonates have any effectiveness in the treatment of overcoming in-grown hair for purposes of shaving.

The combination of Paniccia with Jokura et al. would not lead to the present invention. The mere fact that a material is a moisturizer does not mean that it combats the problem of in-grown hair. If this were so, the base formula of applicant's Table VI as evidenced by the experiment of Cell A would have shown a significant result. That

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formula includes 7% glycerin (as well as the known conditioners mineral oil and petroleum jelly). At the very least, applicant has shown that malonate salts are better than the control (e.g. glycerin). Anyone skilled in the art could not have picked out malonates from the world of possible moisturizers to achieve a very significant reduction of the in-grown hair problem.

Claims 2 and 6 were rejected under 35 U.S.C. § 103(a) as unpatentable over Paniccia and Jokura et al., and further in view of Flick (Cosmetic and Toiletry Formulations, 1996).

Flick was introduced as teaching tris (hydroxymethyl amino methane) as an old and well known buffering agent in the cosmetic art.

Flick does not remedy the basic deficiency of the primary references. Paniccia does not teach that moisturizing agents have affect against razor bumps (in-grown hair). Neither does Jokura teach this. Even if Paniccia were interpreted as teaching moisturizing agents for treatment of in-grown hair, this does not mean that all types of moisturizing agents would be equally effective in controlling the problem. Jokura et al. reports that malonates moisturize, but not that they treat in-grown hair. Applicant has demonstrated that a base formula with glycerin (and smaller amounts of mineral oil and petroleum jelly) relative to malonates are considerably less effective in preventing razor bumps. Those skilled in the art simply would not have arrived at the present invention from consideration of the reference combination.

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The Examiner has provisionally rejected a number of the claims for obviousness-type double patenting over claims in co-pending patent application Serial No. 10/767,679; Serial No. 10/601,731; Serial No. 10/601,856 and Serial No. 10/374,300.

Applicant herewith submits a Terminal Disclaimer which is believed to overcome these rejections.

In view of the foregoing amendment, Terminal Disclaimer and comments, applicants request the Examiner to reconsider the rejection and now allow the claims.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Milton L. Honig", is written over a horizontal line.

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